

CHAPTER NO. 359**SENATE BILL NO. 172****By Haynes, Harper****Substituted for: House Bill No. 1038****By Hargrove, Rinks, Fraley**

AN ACT to amend Tennessee Code Annotated, Title 13, Chapter 7; Title 38, Chapter 6; Title 50, Chapter 3; Title 50, Chapter 6; Title 50, Chapter 9 and Title 56, relative to workers' compensation.

WHEREAS, in Tennessee Code Annotated, Section 50-6-121 and Section 50-6-130, the General Assembly directed the Special Joint Committee of the General Assembly on Workers' Compensation and the Advisory Council on Workers' Compensation to review issues and provide recommendations relating to workers' compensation law; and

WHEREAS, the Committee and the Advisory Council on Workers' Compensation have deliberated on issues relating to the workers' compensation law and have issued recommendations to the General Assembly on these matters; and

WHEREAS, the Committee introduces this legislation to enact these recommendations; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-6-121, is amended by deleting the section in its entirety and by substituting instead the following language:

(a)(1) There is created an advisory council on workers' compensation. There shall be seven (7) voting members of the council, with three (3) representing employers, three (3) representing employees, and one (1) member, who shall serve as the chair and who shall be the state treasurer or the state treasurer's designee. There shall be seven (7) nonvoting members of the council. All members shall have a demonstrable working knowledge of the workers' compensation system.

(A) The chair shall preside at meetings of the council and, under the general direction of the council, shall supervise the work of the staff of the council. The chair may vote only on matters related to the administration of the council or the council's research. The chair is not permitted to vote on any matter that constitutes the making of a policy recommendation to the Governor or to the General Assembly.

(B) The Speaker of the House of Representatives, the Speaker of the Senate and the Governor shall each appoint one (1) employer and one (1) employee representative to the council, who shall be voting members. Representatives, officers and employees from labor organizations or business trade organizations are eligible for

appointment. In making the appointments of the employer representatives, the appointing authorities shall strive to ensure a balance of a commercially insured employer, self-insured employer or an employer who operates a small business. At least one (1) employee representative shall be from organized labor and shall be selected from a list of three (3) names provided by the state labor council of the AFL-CIO.

(C) Voting members shall serve four-year terms and the terms shall be staggered so that the terms of only three (3) voting members shall terminate at the same time. The terms of the voting members who are serving as of June 30, 2003 shall be amended as follows: those members whose terms are scheduled to expire in 2004 shall expire on June 30, 2004 and the successors shall serve a four-year term to begin on July 1, 2004, and to end on June 30, 2008, and those members whose terms are scheduled to expire in 2006 shall expire on June 30, 2006 and the successors shall serve a four-year term to begin on July 1, 2005, and to expire on June 30, 2010. Thereafter, all four-year terms shall begin on July 1 and terminate on June 30, four (4) years thereafter.

(D) The Governor shall also appoint seven (7) nonvoting members of the council as follows: one (1) to represent local governments, one (1) to represent insurance companies, two (2) to represent health care providers and three (3) attorneys. The nonvoting local government representative shall be appointed from a list of three (3) names submitted jointly by the Tennessee Municipal League and the Tennessee County Services Association. The Tennessee Municipal League and the Tennessee County Services Association may alternate recommendations between municipal and county representatives. The nonvoting insurance company representative shall be appointed from either a list of three (3) names submitted by the Alliance of American Insurers or a list of three (3) names submitted by the American Insurance Association. One nonvoting health care provider representative shall be appointed from a list of three (3) names submitted by the Tennessee Medical Association and one nonvoting healthcare provider representative shall be appointed from a list of three (3) names submitted by the Tennessee Hospital Association. The nonvoting attorney members shall be appointed as follows: one (1) from a list of three (3) names submitted by the Tennessee Trial Lawyers Association, who shall primarily represent injured workers' compensation claimants; one (1) from a list of three (3) names submitted by the Tennessee Defense Lawyers Association, who shall primarily represent employers or workers' compensation insurers; and one (1) from a list of three (3) names submitted by the Tennessee Bar Association.

(E) Beginning with the appointments made in calendar year 2003, the nonvoting members appointed by the Governor shall serve the following terms: the local government representative, the health care representative selected from a list submitted by the Tennessee Medical Association, and the attorney selected from the list submitted by the Tennessee Bar Association shall serve from the date of appointment until June 30, 2005; the insurance company representative, the health care

representative selected from the list submitted by the Tennessee Hospital Association, the attorney selected from the list submitted by the Tennessee Trial Lawyers Association, and the attorney selected from the list submitted by the Tennessee Defense Lawyers Association shall serve from the date of appointment until June 30, 2007. Thereafter, the nonvoting members shall be appointed to four-year terms that shall begin on July 1 and terminate on June 30, four (4) years thereafter.

(F) The chair and vice-chair of the special joint committee on workers' compensation, the commissioners of labor and workforce development and commerce and insurance or their designees, shall be ex officio, nonvoting members of the council.

(2) Each voting and nonvoting member of the advisory council on workers' compensation shall, upon the expiration of such member's term, be eligible for reappointment and shall serve until a successor is appointed. In the event a member resigns or becomes ineligible for service during such member's term, a successor shall be appointed by the appropriate appointing authority to serve the remainder of the term.

(3) No employer shall discriminate in any manner against an employee who serves on the advisory council because of such service. Employees who serve on the advisory council shall not be denied any benefit from their employer because of such service. Travel expenses of the employee representatives on the council shall be reimbursed pursuant to subsection (b); however, employers may choose to pay the travel expenses of their employees' service on the advisory council according to their own policies.

(b) Members of the council shall not be paid but may be reimbursed for travel expenses. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations promulgated by the Department of Finance and Administration and approved by the attorney general and reporter.

(c) The council shall meet at least twice each year. It shall annually review workers' compensation in Tennessee and shall issue a report of its findings and conclusions on or before July 1 of each year. The annual report shall be sent to the Governor, the Speakers of the House and Senate, the chair and vice-chair of the special joint committee on workers' compensation, the commissioner of labor and workforce development, the commissioner of commerce and insurance and the clerks of the House and Senate. Notice of the publication of the annual report and all other reports published by the council shall be provided to all members of the General Assembly pursuant to § 3-1-114.

(d) In performing its responsibilities, the council's role shall be strictly advisory, but it may:

(1) Make recommendations to the Governor, the General Assembly, the special joint committee on workers' compensation, the standing committees of each house that review the status of the workers' compensation system, the commissioner of labor and workforce development and the commissioner of commerce and insurance relating to the promulgation or adoption of legislation or rules;

(2) Make recommendations to the commissioner of labor and workforce development and the commissioner of commerce and insurance regarding the method and form of statistical data collections; and

(3) Monitor the performance of the workers' compensation system in the implementation of legislative directives.

(e) The council is authorized to retain staff and professional assistance, such as consultants and actuaries, subject to budgetary approval in the General Appropriations Act. For administrative purposes, the council shall be attached to the Department of Labor and Workforce Development for all administrative matters relating to receipts, disbursements, expense accounts, budget, audit and other related items. The autonomy of the council and its authority are not affected hereby and the commissioner of labor and workforce development shall have no administrative or supervisory control over the council or its employees. Employees of the council shall not have the status of career service employees pursuant to Title 8.

(f) The council shall develop evaluations, statistical reports and other information from which the General Assembly may evaluate the impact of the legislative changes to the workers' compensation law, including, but not limited to the Reform Acts of 1992 and 1996 and subsequent changes to the workers' compensation system.

(g) Within its annual report to the General Assembly, the council shall report on activities and outcomes related to the Workers' Compensation Fraud Act, compiled in Title 56, Chapter 47. The Department of Commerce and Insurance, Department of Labor and Workforce Development, Tennessee Bureau of Investigation and the district attorneys general conference shall cooperate with the council in the development of information for inclusion in such report.

SECTION 2. Tennessee Code Annotated, Section 50-6-204(a)(4)(B), is amended by adding the following language at the end of the subdivision:

The provisions of this subdivision shall sunset as of June 30, 2005.

SECTION 3. Tennessee Code Annotated, Section 50-6-244(b), is amended by deleting the subsection in its entirety and substituting instead the following language:

(b)(1) A statistical data form shall be filed for every workers' compensation matter that is concluded by settlement, whether approved by a court or the Department of Labor and Workforce Development. A statistical data form shall be filed for every workers' compensation matter that is concluded by a trial so that the form reflects the trial court's ruling and information that is current as of the date the trial order is submitted to the court for approval, whether or not an appeal of the matter is anticipated or filed. A statistical data form shall be either typed or completed by computer using a form available on the website of the division of workers' compensation.

(2) A statistical data form is not required to be filed in cases that involve reconsideration of a prior settlement or trial judgment order for which a statistical data form was filed at the time of submission of the prior order. A statistical data

form is not required to be filed if the only issue resolved by an order is the closing of future medical benefits that remained open pursuant to a prior order for which a statistical data form was filed at the time of submission of the prior order.

(3) In cases involving a workers' compensation settlement that is approved by a court, the completed statistical data form shall be filed at the same time as the order approving the settlement is filed and shall be filed with the clerk of the court in which the settlement order is filed. A clerk of the court shall not accept a settlement order for filing unless it is accompanied by a fully completed statistical data form.

(4) In cases involving a workers' compensation case that is resolved by trial, the completed statistical data form shall be filed at the same time as the final order is submitted to the trial court for approval and shall be filed with the clerk of the court in which the matter was tried. A clerk of the court shall not accept a trial order for filing unless it is accompanied by a fully completed statistical data form.

(5) A settlement order of a court in a workers' compensation matter is not final until the statistical data form required by this section is fully completed and filed with the appropriate clerk of the court.

(6) A workers' compensation trial order is not final until the statistical data form required by this section is fully completed and filed with the appropriate clerk of the court. In the event of an appeal of a workers' compensation trial verdict to the Supreme Court of Tennessee, this section shall neither abrogate nor supercede the Rules of Appellate Procedure regarding the computation of the time for the proper filing of a notice of appeal. The information submitted in the statistical data form shall not be admissible on appeal for any purpose.

SECTION 4. Tennessee Code Annotated, Section 50-6-244, is amended by adding the following new subsection:

() (1) If the commissioner of labor and workforce development, or the commissioner's designee, determines that an insurer or self-insured employer fails to complete substantially and file the statistical data forms with such frequency as to indicate a general business practice, the commissioner may assess a monetary penalty against the insurance company for the employer or against the employer, if self insured. The amount of the monetary penalty shall not exceed one hundred dollars (\$100). For the purposes of this subsection, "general business practice" means an insurer or self-insured employer fails to complete substantially and file a statistical data form more than five (5) times.

(2) No monetary penalty may be assessed by the commissioner, or the commissioner's designee, with respect to a form that has been filed with the division of workers' compensation for more than ninety (90) days. No monetary penalty may be assessed for a statistical data form that was not filed with the court clerk more than ninety (90) days from the date of entry of the final order of the court. No monetary penalty may be assessed due to the failure to provide information on the statistical data form that is solely within the knowledge of the employee or due solely to the failure of the employee to sign such form.

(3) The commissioner, or the commissioner's designee, shall notify the following entities of the provisions of this section before January 1, 2004:

- (A) insurance companies licensed to write workers' compensation coverage in Tennessee;
- (B) employers who are self-insured pursuant to Section 50-6-405;
- (C) the Tennessee Trial Lawyers Association;
- (D) the Tennessee Defense Lawyers Association;
- (E) the Tennessee Bar Association;
- (F) the Administrative Office of the Courts; and
- (G) the County Officials Association of Tennessee.

(4) An insurance company or self insured employer assessed a monetary penalty by the commissioner pursuant to this subsection, may appeal the penalty under the Uniform Administrative Procedures Act in Tennessee Code Annotated, Title 4, Chapter 5. The commissioner, or an agency member appointed by the commissioner, shall have the authority to hear as a contested case an administrative appeal of any monetary penalty assessed pursuant to this subsection.

SECTION 5. Tennessee Code Annotated, Section 50-6-402(b), is amended by deleting the phrase "advisory prospective loss cost filing" from the first sentence of such subsection and substituting instead the phrase "workers' compensation loss cost filing made by the designated rate service organization".

SECTION 6. Tennessee Code Annotated, Section 50-6-402, is amended by adding the following language as new subsections (c) and (d):

(c) Prior to the commissioner of commerce and insurance establishing the multiplier to be applied to the assigned risk plan, as provided in § 56-5-314(c), the commissioner shall provide notice of the intended action, including supporting rationale therefor, to the advisory council on workers' compensation. The council may, within fifteen (15) days of receipt of such notice, provide written comment and recommendation to the commissioner related to the intended action. After said fifteen-day period has expired the commissioner shall establish the multiplier, by order, as provided in § 56-5-314(c).

(d) The commissioner of commerce and insurance shall report quarterly, beginning with the third quarter of 2003, to the advisory council on workers' compensation concerning all workers' compensation filings made by the designated rate service organization received by the Department of Commerce and Insurance that were not referred to the council as set out in subsection (b) since the last report.

SECTION 7. Tennessee Code Annotated, Section 50-6-405(a)(2), is amended by deleting the subdivision in its entirety, and by substituting instead the following language:

(2) Possess a valid certificate of authority from the commissioner of commerce and insurance by furnishing satisfactory proof of such employer's financial ability to pay all claims that may arise against such employer under this chapter and guarantee the payment of the same in the amount and manner and when due as provided for in this chapter.

SECTION 8. Tennessee Code Annotated, Section 50-6-405(b), is amended by deleting the subsection in its entirety and substituting instead the following language:

(b) If the employer elects to proceed under subdivision (a)(2), the commissioner of commerce and insurance shall require the applicant to pay a nonrefundable application fee of five hundred dollars (\$500) and file and maintain with the Department of Commerce and Insurance the following:

(1) A deposit of acceptable negotiable securities with a market value of not less than one hundred twenty-five thousand dollars (\$125,000) or a bond in the same amount. The securities or bond shall be held by the commissioner of commerce and insurance and be conditioned to run directly for the benefit of the employees subject to the Workers' Compensation Law and may be enforced by them directly in an action in their name. All indemnity bonds filed under this provision of law must be issued by an insurance company authorized to do business in Tennessee and must contain a provision requiring the issuer to give the commissioner of commerce and insurance thirty (30) days' written notice of intention to revoke or cancel such bond; and

(2) Evidence of the employer's financial ability to pay all claims that may arise against the employer in the form of an annual certified financial statement, including a statement of assets and liabilities and a statement of profit and loss, to be filed no later than sixty (60) days after the company's immediately preceding fiscal year. Such financial statements are to include a detailed accounting for reserves for losses outstanding incurred in connection with workers' compensation self-insurance. Such financial statement shall be kept confidential by the commissioner of commerce and insurance and shall not be construed to be a public record pursuant to Title 10, Chapter 7.

(3) Whenever an employer has complied with the provisions of § 50-6-405(a)(2) and § 50-6-405(b)(1) and (2), the commissioner of commerce and insurance, or the commissioner of commerce and insurance's designee, shall issue to the employer a certificate of authority allowing the employer to self-insure under this provision. Notice of this authorization shall be sent to the commissioner of labor and workforce development.

(4) Upon failure by the authorized self-insured employer to furnish the commissioner of commerce and insurance the requirements delineated in § 50-6-405(a)(2) and § 50-6-405(b)(1) and (2), the commissioner of commerce and insurance, or the commissioner of commerce and insurance's designee, may, upon thirty (30) days' written notice and an opportunity for a hearing, revoke the certificate authorizing the employer to self-insure granted under this provision. The commissioner of commerce and insurance may, without prior notice and upon reasonable grounds, suspend an authorized self-insurer's certificate before

a hearing is commenced. All hearings conducted under this subsection shall comply with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(5) A hearing under this provision shall be requested in writing by the self-insured employer within fifteen (15) days of receiving written notification from the commissioner of commerce and insurance, or the commissioner of commerce and insurance's designee. In any proceeding in which the self-insured employer's certificate of authority is revoked, the self-insured employer shall pay all costs associated with the proceeding.

(6) The commissioner of commerce and insurance, or the commissioner of commerce and insurance's designee, shall immediately notify the commissioner of labor and workforce development of any decision to suspend or revoke a certificate authorizing an employer to self-insure.

SECTION 9. Tennessee Code Annotated, Section 50-6-405(e), is amended by deleting the punctuation and language “, and upon default thereof, such commissioner shall so advise the commissioner of labor and workforce development” at the end of the subsection.

SECTION 10. Tennessee Code Annotated, Section 50-6-407, is amended by deleting the section in its entirety and by substituting instead the following language:

Every individual, firm, association, or corporation using the services of one (1) or more persons for pay shall post and maintain in a conspicuous place on the business premises a printed notice regarding workers' compensation as prescribed by the commissioner of labor and workforce development. The notice shall include, at a minimum, a general description of the duties and obligations of both the employer and the employee under such law; the name, address and telephone number of the individual to notify in the event of a work-related injury; a toll-free number and address for the Department of Labor and Workforce Development at which employers or employees may obtain additional information; and the name, address and telephone number of a representative of the employer who can confirm whether such individual, firm, association, or corporation is subject to the Tennessee Workers' Compensation Law; and such other information as may be required through rules promulgated by the commissioner of labor and workforce development.

SECTION 11. Tennessee Code Annotated, Section 13-7-117, is amended by deleting the section and its catch line in their entirety and by substituting instead the following language:

13-7-117. (a) No building permit shall be issued until the county building commissioner receives a copy of either a certificate of insurance or a workers' compensation policy as evidence of the existence of workers' compensation insurance.

(b) The county building commissioner shall keep on file such copy of either the certificate of insurance or the workers' compensation policy for the life of the permit. After the building permit has expired, the county building commissioner shall return by mail the copy of the certificate of insurance or of the workers' compensation policy within ten (10) working days to the person who obtained the permit.

(c) (1) The provisions of this section do not apply to those persons who are not required by Title 50, Chapter 6, to obtain workers' compensation coverage, to any person who performs work on such person's own property in such person's own county of residence, or to any person who directly supervises work on such person's own property in such person's own county of residence.

(2) Persons not required to present evidence of compliance with the provisions of §§50-6-405 and 50-6-406 pursuant to this subsection shall present or sign an affidavit which attests to their exemption from the provisions of this section. A person authorized to issue building permits who issues a building permit to a person exempted from the provisions of this section shall keep on file for the life of the permit such affidavit of exemption.

(d) A person authorized to issue building permits, who in good faith accepts an affidavit of exemption, a copy of a certificate of insurance, or a copy of a workers' compensation policy shall not be liable in any criminal or civil action alleging the person obtaining the building permit was subject to the provisions of §§50-6-405 and 50-6-406 and such person did not in fact have workers' compensation coverage. Compliance with the provisions of this section shall be a rebuttable presumption that the person authorized to issue building permits acted in good faith.

(e) A violation of this section is a Class C misdemeanor.

SECTION 12. Tennessee Code Annotated, Section 13-7-211, is amended by deleting the section and the catch line in their entirety and by substituting instead the following language:

13-7-211. (a) No building permit shall be issued until the municipal office which issues such permits receives a copy of either a certificate of insurance or a workers' compensation policy as evidence of the existence of workers' compensation insurance.

(b) The municipal office shall keep on file such copy of either the certificate of insurance or of the workers' compensation policy for the life of the permit. After the building permit has expired, the municipal office shall return by mail the copy of the certificate of insurance or the workers' compensation policy within ten (10) working days to the person who obtained the permit.

(c)(1) The provisions of this section do not apply to those persons who are not required by Title 50, Chapter 6, to obtain workers' compensation coverage, to any person who performs work on such person's own property in such person's own county of residence, or to any person who directly supervises work on such person's own property in such person's own county of residence.

(2) Persons not required to present evidence of compliance with the provisions of §§50-6-405 and 50-6-406 pursuant to this subsection shall present or sign an affidavit which attests to their exemption from the provisions of this section. A person authorized to issue building permits who issues a building permit to a person exempted from the provisions of this section shall keep on file for the life of the permit such affidavit of exemption.

(d) A person authorized to issue building permits, who in good faith accepts an affidavit of exemption, a copy of the certificate of insurance, or a copy of the workers'

compensation policy, shall not be liable in any criminal or civil action alleging the person obtaining the building permit was subject to the provisions of §§50-6-405 and 50-6-406 and such person did not in fact have workers' compensation coverage. Compliance with the provisions of this section shall be a rebuttable presumption that the person authorized to issue building permits acted in good faith.

(e) A violation of this section is a Class C misdemeanor.

SECTION 13. Tennessee Code Annotated, Section 50-6-405(c) (1), is amended by deleting the phrase "as provided in subdivision (a)(2)" at the end of the first sentence.

SECTION 14. Tennessee Code Annotated, Title 56, Chapter 5, Part 3, is amended by adding the following language as a new, appropriately designated section:

Section 56-5-323. A workers' compensation insurer shall, within thirty (30) days after receipt of a written request from an insured or the insured's designee, furnish to that insured or insured's designee a copy of the insured's prior three (3) year loss run history for workers' compensation insurance, or complete loss run history with such insurer if the history is less than three (3) years. If the insurer fails to furnish the requested information within the time allowed herein, such failure shall be a violation under the Unfair Competition and Deceptive Acts, codified as Title 56, Chapter 8, Part 1, and the requestor may seek enforcement and any remedies allowed pursuant to such chapter.

SECTION 15. This act shall take effect upon becoming a law, the public welfare requiring it, except that Sections 7, 8, 9, 10, 13 and 14 shall become effective on July 1, 2003, the public welfare requiring it.

Provided, however, the notice provisions of Section 4()(3) shall take effect upon becoming a law, the public welfare requiring it. The other provisions of Section 4 shall take effect on January 1, 2004, the public welfare requiring it.

PASSED: May 29, 2003


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 17th day of June 2003


PHIL BREDESEN, GOVERNOR